



County of Santa Cruz Board of Supervisors

Agenda Item Submittal

From: DPW: Recycling

(831) 454-2160

Subject: Approve Pollution Prevention Ordinance

Meeting Date: November 5, 2019

Recommended Actions

- 1) Approve in concept an ordinance to add a charge on single-use disposable cups at businesses in the unincorporated County;
- 2) Accept proposed Notice of Exemption from the California Environmental Quality Act (CEQA);
- 3) Schedule the ordinance for final adoption on November 19, 2019; and
- 4) Direct Public Works to conduct outreach and education to local businesses.

Executive Summary

In order to help reduce litter and pollution, the proposed ordinance would encourage the use of reusable cups by adding a mandatory charge of twenty-five cents for single-use disposable cups at all food service businesses within the unincorporated County beginning in 2021.

Background

On August 6, 2019, the Board heard a presentation on options for reducing litter and pollution in Santa Cruz County and directed staff to draft an ordinance requiring a fee for single use disposable cups. The proposed ordinance is consistent with the County's Zero Waste Plan and the Operational Plan's commitment to reduce plastic pollution.

Analysis

Santa Cruz County has always been a leader in environmental protection and pollution prevention. The County has taken several steps to address the problem, including bans on plastic bags and styrofoam, requirements for all food service products to be recyclable or compostable, an aggressive campaign against illegal dumping, and more. Despite these efforts, litter from food service businesses continues to be prevalent in County streets and open spaces, and additional efforts are needed.

There is ample evidence that modest charges for disposable products can help persuade consumers to embrace reusable options. When the County implemented a charge for single-use shopping bags, a study by Save our Shores indicated that more than 90% of shoppers switched to reusable bags within the first month. This behavior has continued in the years since and has now spread across California and beyond.

The City of Berkeley recently conducted a study of consumer choices about drinking vessels and potential measures to encourage the switch to reusable cups. The study found that the lowest charge likely to result in a significant shift in behavior was twenty-five cents. It is worth noting that Berkeley also added an administrative fee on businesses to help cover the city's cost of overseeing the program, which appears will be added to Berkeley's business license fee.

To address possible health and safety concerns, the proposed ordinance allows businesses to reject any refillable container that is dirty, damaged or otherwise unsuitable. There are also provisions for requesting exemptions where needed.

The initial ordinance would provide that all cup charges would remain with the individual merchant. Public Works is studying the possibility of either collecting the funds for use by the County for litter prevention and cleanup efforts or directing that the funds be expended for similar purposes through other means. Either step would require an election and approval by two-thirds of the voters, although a less specific revenue measure may require only 50% approval.

The potential revenue from such a step is hard to determine, for two reasons. First, estimates of local cup usage are based on extrapolations from state and national numbers and may not be completely accurate. Secondly, it is difficult to estimate the rate at which local consumers will switch to reusable cups. These uncertainties leave a wide range of potential revenue figures. Our best estimate is that for consumers who continue to use disposable cups and pay the charge, the revenue could exceed over \$1 million per year. It should be kept in mind that a program collecting funds from hundreds of local businesses would require cooperation with state authorities and necessitate significant County resources for tracking, auditing, enforcement, etc.

County staff have been in contact with staff and elected officials at local cities in an effort to ensure a consistent landscape of local laws across the County. The Santa Cruz City Council is planning to consider in January an ordinance very similar to the County's proposed ordinance. The City of Watsonville recently adopted a similar measure, although it set the initial cup charge at 10 cents instead of the 25 cents recommended in the proposed ordinances for both the City and County of Santa Cruz. Discussions with the other local cities are ongoing.

If the ordinance is approved by the Board, Public Works will conduct an extensive outreach and education campaign to provide local businesses with necessary information, assist with compliance and help to resolve any challenges.

Strategic Plan Elements

4. A, B, C (Sustainable Environment: Outdoor Experience, Natural Resources and Local Conservation)

Litter and plastic reduction supports efforts to enhance outdoor experiences, protects natural resources, supports clean water and conservation, and reduces solid waste handling.

Submitted by:

Matt Machado, Deputy CAO, Director of Public Works

Recommended by:

Carlos J. Palacios, County Administrative Officer

Attachments:

- a Ordinance (Clean Copy) - Attachment A
- b Notice of Exemption

ORDINANCE _____

ORDINANCE ADDING CHAPTER 5.47 TO THE COUNTY CODE TO ADDRESS LITTER AND POLLUTION REDUCTION AND SINGLE-USE DISPOSABLE CUPS

The Board of Supervisors of the County of Santa Cruz hereby finds and declares the following:

WHEREAS, the Board has determined that it is appropriate to implement restrictions on the distribution of single-use disposable cups; and

WHEREAS, the Board has determined that it is in the public interest for environmental, health, and safety reasons to implement a fee for single-use disposable cups at all businesses in the unincorporated areas of Santa Cruz County;

NOW THEREFORE, the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Chapter 5.47 is hereby added to the Santa Cruz County Code, to read as follows:

Chapter 5.47**LITTER AND POLLUTION REDUCTION – SINGLE USE DISPOSABLE CUPS**

Sections:

- 5.47.010 Findings and Purpose.**
- 5.47.020 Definitions.**
- 5.47.050 Mandatory charges for disposable cups.**
- 5.47.060 Reusable customer cups.**
- 5.47.070 Implementation.**
- 5.47.080 Exemptions.**
- 5.47.090 Enforcement.**
- 5.47.100 Violations.**
- 5.47.110 No conflict with Federal or State law.**
- 5.47.120 Severability.**

5.47.010 Findings and Purpose.

(A) The purpose of this chapter is to protect the health, safety and welfare of the public and protect the environment by reducing waste, litter and pollution.

Attachment A

(B) The County of Santa Cruz seeks to protect the environment, the economy, and public health by instituting appropriate limits on plastic waste pollution. The County of Santa Cruz also has an official Zero Waste goal, which is to be reached by waste reduction, reuse, recycling, and composting.

(C) The County of Santa Cruz is situated at the edge of the Monterey Bay National Marine Sanctuary. Material which is littered or otherwise deposited improperly in the County can find its way into the Monterey Bay and can negatively impact the marine environment and sea life.

(D) Single use disposable cups are a major contributor to street litter, ocean pollution, harm to marine and other wildlife, and greenhouse gas emissions.

(E) The production, consumption and disposal of single use cups contributes significantly to the depletion of natural resources. Litter in waterways and oceans breaks down into smaller pieces that are not biodegradable and are present in most of the world's oceans.

(F) Some single use cups can contain harmful fluorinated chemicals which are linked to serious health conditions.

(G) Food and beverage single use food ware products make up approximately 25% of all waste produced in California. In Santa Cruz County, the majority of street litter consists of food and beverage packaging and this packaging is a significant contributor to the total amount of waste entering the waste stream.

(H) It is in the interest of the health, safety and welfare of all who live, work and do business in the County that the amount of litter on public streets, parks and in other public places be reduced. The County seeks to eliminate solid waste at its source and maximize recycling and composting in accordance with its Zero Waste Goals. Reduction of single use cups furthers this goal.

(I) This chapter is consistent with the County's Climate Action Plan, Integrated Waste Management Plan, and the CalRecycle recycling and waste disposal regulations contained in Titles 14 and 27 of the California Code of Regulations.

5.47.020 Definitions.

For purposes of this Chapter:

(A) "Director" means the Director of the Department of Public Works or their designee.

(B) "Single-use disposable cup" is a beverage cup designed for single use to serve beverages such as water, cold drinks, hot drinks, and alcoholic beverages.

(C) "Event" means any gathering held on County property, including a County street, park or other facility, and subject to a County permit, where more than 100 people attend or participate.

Attachment A

(D) "Participant athletic event" means an athletic event in which a group of people collectively walk, jog, run, bicycle or otherwise participate in a sport or activity on County property, including a County street.

(E) "Person" means any individual, group, company, organization or other entity.

(F) "Prepared Food" means foods or beverages which are prepared on the vendor's premises by cooking, chopping, slicing, mixing, freezing, squeezing, or other processing and which require no further preparation to be consumed. "Prepared Food" does not include raw uncooked whole fruits or vegetables which are not chopped, squeezed, or mixed, or raw uncooked meat products.

(G) "Prepared Food Vendor" means any establishment located within the County of Santa Cruz, including a bakery, cafeteria, drive-in, food products store, food service establishment (carry-out, quick-service, full-service), drugstore or theater, mobile food facility, temporary food facility (e.g., see California Health and Safety Code Section 113831 and 113930), bar or other similar establishment, selling Prepared Food to be consumed on or off its premises.

(H) "Reusable cup" means a cup, glass or other beverage container that is manufactured of durable materials and that is specifically designed and manufactured to be washed and sanitized and to be used repeatedly over an extended period of time, and is safe for washing and sanitizing according to applicable regulations.

(I) "Takeout food delivery service" means a third-party delivery service which picks up takeout food from a prepared food vendor and delivers it to the customer for consumption off the premises of the Prepared Food Vendor.

5.47.050 Mandatory charges for disposable cups.

(A) Any person, business, event, food truck, or other entity, including both permanent and temporary facilities, which sells or provides hot or cold beverages in a single-use disposable cup must charge an additional twenty-five cents for each cup. Sellers may not waive or absorb such charges.

(B) Charges for disposable cups shall be identified separately on any post-sale receipt provided and, pre-sale, shall be clearly identified for the customer on media such as menus, ordering platforms, and/or menu boards. Customers placing orders online or by telephone shall be informed of disposable cup charges at the time the order is placed. All cup charges shall be retained by the seller.

(C) Businesses may not charge for use of a reusable cup provided by the customer.

5.47.060 Reusable customer cups.

Except as provided in Chapter 11 of Part Seven of Division 104 of the California Health and

Attachment A

Safety Code (Temporary Food Facilities), customers may provide their own reusable cups for beverage service in accordance with Health and Safety Code Section 114075(e), as it may be amended. Prepared food vendors may refuse, at their sole discretion, any customer-provided reusable cup that is cracked, chipped or corroded, appears inappropriate in size, material, or condition for the intended beverage, or that appears to be excessively soiled or unsanitary, and instead require use of a reusable cup for a beverage consumed on the premises, or a disposable cup that conforms to the Disposable Cup Standards in Chapter 5.46, "Environmentally Acceptable Packaging Materials," and will collect from the customer the required charge.

5.47.070 Implementation.

(A) No less than 60 days after final adoption, the Director shall post, mail or deliver a copy of the ordinance adopting this chapter to affected businesses within the unincorporated area of the County of Santa Cruz.

(B) The Director shall use additional outreach and education measures to publicize this ordinance and to assist affected persons or businesses with implementation.

(C) This ordinance shall take effect as of January 1, 2021.

5.47.080 Exemptions.

(A) All customers demonstrating, at the point of sale, a payment card or voucher issued by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the California Health and Safety Code, as it may be amended, or an electronic benefit transfer card (EBT) issued pursuant to Section 10072 of the California Welfare and Institutions Code, shall be exempt from the disposable cup charge.

(B) The Director may exempt an affected business or person from the requirements set forth in this chapter for no more than one year upon the affected business or person showing, in writing, that this chapter would create an undue hardship or practical difficulty not generally applicable to other businesses or persons in similar circumstances. The decision to grant or deny an exemption shall be in writing, and the Director's decision shall be final

- 1) An exemption application shall include all information necessary for the Director to make a decision on the exemption application, including but not limited to documentation showing factual support for the claimed exemption.
- 2) The Director may approve the exemption application in whole or in part, with or without conditions.
- 3) The decision of the Director shall be final and may not be appealed to any other person or body.

5.47.090 Enforcement.

Enforcement of this chapter shall be as follows:

Attachment A

- (A) The Director shall have primary responsibility for enforcement of this chapter and shall have authority to issue citations for violation of this chapter. The Director is authorized to establish regulations or administrative procedures to ensure compliance with this chapter.
- (B) The County may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulation or administrative procedure authorized by it.
- (C) The remedies and penalties provided in this chapter are cumulative and not exclusive of one another.
- (D) The Director may inspect any business establishment's records or premises to verify compliance with this chapter.

5.47.100 Violations.

Violations of this chapter shall be enforced as follows:

- (A) Violation of this chapter is hereby declared to be a public nuisance. Any violation shall be subject to abatement by the County, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by injunction, upon a showing of violation.
- (B) Upon a first violation, the Director shall mail a written warning. The warning shall recite the violation and advise that future violations may result in fines.
- (C) Upon a second or subsequent violation, or failure to correct the initial violation, the following penalties will apply:
 - (1) A fine not exceeding \$100.00 for the first violation that occurs 30 days or more after the first warning.
 - (2) A fine not exceeding \$200.00 for the second violation, or failure to correct the initial violation, that occurs 60 days or more after the first warning.
 - (3) A fine not exceeding \$500.00 for the third violation, or failure to correct the initial violation, that occurs 90 days or more after the first warning.
 - (4) A fine not exceeding \$500.00 for every 30-day period not in compliance, or part thereof, that occurs 90 days or more after the first warning.
- (D) Remedies and fines under this section are cumulative.

5.47.110 No conflict with Federal or State law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

Attachment A

5.47.120 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Board of Supervisors hereby declares that it would have enacted this chapter, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional.

SECTION II

The Board finds and determines that adoption of this Ordinance is categorically exempt from the provisions of the California Environmental Quality Act under California Code of Regulations Title 14, Section 15308, as an action taken by a regulatory agency to ensure the maintenance, restoration, enhancement, or protection of the environment.

SECTION III

This ordinance shall take effect the 1st day of January 2020.

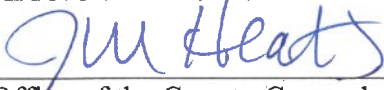
Passed and adopted this _____ day of _____, 20____, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
 NOES: SUPERVISORS
 ABSENT: SUPERVISORS
 ABSTAIN: SUPERVISORS

 Chairperson of the Board of Supervisors

Attest: _____
 Clerk of the Board

APPROVED AS TO FORM:


 Office of the County Counsel



County of Santa Cruz

PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

www.sccoplanning.com

NOTICE OF EXEMPTION

To: Clerk of the Board
Attn: Susan Galloway
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Project Name: Single-use Disposable Cup Ordinance

Project Location: County-wide (unincorporated only)

Assessor Parcel No.: N/A

Project Applicant: County of Santa Cruz Department of Public Works

Project Description: Adoption of an ordinance requiring a \$.25 charge for all single use disposable cups when hot or cold beverages are sold

Agency

Approving Project: County of Santa Cruz

County Contact: Tim Goncharoff

Telephone No. 831-454-2160

Date Completed:

This is to advise that the County of Santa Cruz (*insert County decision-making body*) has approved the above described project on _____ (date) and found the project to be exempt from CEQA under the following criteria:

Exempt status: (*check one*)

- ☐ The proposed activity is not a project under CEQA Guidelines Section 15378.
- ☐ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
- ☐ The proposed activity is exempt from CEQA as specified under CEQA Guidelines Section 15061(b)(3).
- ☐ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
- ☐ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type:

☒ **Categorical Exemption**

Class 8 – Actions by Regulatory Agencies for Protection of the Environment

Reasons why the project is exempt:

The purpose of this ordinance is to protect the health, safety and welfare of the public and protect the environment by reducing waste, litter and pollution. The County of Santa Cruz has an obligation to protect the environment, the economy, and public health. The County of Santa Cruz has an official Zero Waste goal, which is to be reached by waste reduction, reuse, recycling, and composting. The County of Santa Cruz is situated at the edge of the Monterey Bay National Marine Sanctuary. Material which is littered or otherwise deposited improperly in the County can find its way into the Monterey Bay and can negatively impact the marine environment and sea life. Single use disposable cups are a major contributor to street litter, ocean pollution, marine and other wildlife harm and greenhouse gas emissions. The production, consumption and disposal of single use cups contributes significantly to the depletion of natural resources. Litter in waterways and oceans breaks down into smaller pieces that are not biodegradable and are present in most of the world's oceans. Some single use cups can contain harmful fluorinated chemicals which are linked to serious health conditions. Adoption of this ordinance is categorically exempt under Section 15308, as an action taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment.

Signature: _____

Date: _____

Title: Environmental Coordinator